

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 11
)	
W.R. GRACE & CO., et al.,)	Case No. 01-1139(JKF)
)	
Debtors.)	Jointly Administered
)	
_____)	

**BNSF RAILWAY COMPANY’S PRELIMINARY WITNESS LIST AND RESERVATION
OF RIGHTS WITH RESPECT TO WITNESSES TO BE CALLED
DURING THE PLAN CONFIRMATION HEARING**

Pursuant to the Court’s Second Amended Case Management Order Related to the First Amended Joint Plan of Reorganization, dated January 29, 2009 (the “Case Management Order”), BNSF Railway Company (“BNSF”), through its counsel Pepper Hamilton LLP, hereby submits, prior to the close of discovery, its preliminary list of witnesses it may call at the hearings on Plan confirmation issues, and reserves its right to designate additional witnesses on or prior to the deadlines established in the Case Management Order for the submission of final witness lists.

As discovery is not yet completed, BNSF has not received replies to discovery it served on various parties on or about January 23, 2009 (the response deadline for which is March 24, 2009), and BNSF has not yet submitted its final plan objections (the deadline for which is May 20, 2009), BNSF reserves its right to supplement or alter this list as necessary and to designate additional/alternative individuals to testify at the Confirmation Hearing.

BNSF currently intends to call a document custodian, representatives of the various Grace Insurers and/or representatives of the Debtors, to establish the admissibility of certain business records, including, without limitation, the contracts between the Debtors or their predecessors and BNSF or its predecessors, the insurance contracts at issue, correspondence relating

to the insurance contracts at issue, and the asbestos-related claims asserted against BNSF relating to the Debtors, unless a stipulation can be executed as to authenticity and validation. BNSF further intends to call an employee or agent of BNSF to establish the existence of current and future claims asserted or which may be asserted against BNSF for alleged asbestos-related illnesses relating to the Debtors' operations at the Libby mine, unless a stipulation can be executed establishing that BNSF is subject to present and future claims alleging asbestos-related injuries relating to the Debtors' operations at the Libby mine.

BNSF further anticipates calling witnesses identified by the Grace Insurers and/or the Debtors in response to BNSF's discovery requests. Because BNSF has not yet received responses to its discovery requests, for which the deadline to respond is March 24, BNSF can not presently ascertain the identity of these witnesses.

BNSF may call as witnesses any individuals disclosed as potential fact or expert witnesses or called as fact or expert witnesses by other parties to the proceedings.

BNSF may identify additional witnesses in further support of its Plan objection as discovery proceeds, as well as in response to any issues raised by the Plan Proponents or other parties as part of the Plan confirmation process. BNSF reserves its right to designate additional witnesses prior to the deadline for submitting final witness lists. In particular, but without waiving its right to designate any additional witnesses, BNSF may call, and reserves the right to designate, additional fact witnesses relating to (a) the services provided by BNSF to the Debtors; (b) the Debtors' and BNSF's respective responsibilities pursuant to the contracts between the parties; (c) BNSF's attempts to locate copies of the insurance policies indemnifying BNSF for claims relating to the Debtors; and (d) current and potential future claims asserted against BNSF for alleged asbestos-related diseases relating to the Debtors' Libby mine.

The Plan Proponents bear the burden of proof as to the confirmability of the Plan. BNSF reserves the right to call any witnesses needed for rebuttal or impeachment purposes, or as it may deem necessary to address any argument or evidence that may be advanced that may impact the interests of BNSF.

Dated: March 13, 2009
Wilmington, DE

PEPPER HAMILTON LLP

/s/ James C. Carignan
James C. Carignan (Bar No. 4230)
Hercules Plaza, Suite 5100
1313 Market Street
PO Box 1709
Wilmington, DE 19899-1709
Tel: (302) 777-6500
Fax: (302) 777-6511

Of Counsel:

Edward C. Toole, Jr.
Linda J. Casey
PEPPER HAMILTON LLP
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103
Tel: (215) 981-4000/ Fax: (215) 981-4750

Counsel for BNSF Railway Company